

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

DAVID TIMOTHY CRUM d/b/a
NATIONAL MINE SUPPLY

Plaintiff,

v.

Civil Action No. 2:14-24861

CANOPIUS US INSURANCE INC., and
f/k/a OMEGA US INSURANCE INC.,

Defendants

MEMORANDUM OPINION AND ORDER

Pending is the defendants' motion for default judgment or, in the alternative, for summary judgment on their counterclaim for declaratory judgment, filed December 1, 2014.

This action was previously referred to Dwane L. Tinsley, United States Magistrate Judge, who has submitted his Proposed Findings and Recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). The court has reviewed the Proposed Findings and Recommendation entered by the magistrate judge on July 2, 2015. The magistrate judge recommends that the defendants' motion for default judgment be granted and their motion for summary judgment denied as moot.

The plaintiff has not objected to the Proposed Findings and Recommendation. It is undisputed that on three

different occasions the plaintiff failed to produce documents requested by defendants during the investigation of his insurance claim. It is further undisputed that the failure to produce those documents materially prejudiced the defendants during the investigation of the claim. It is also undisputed that the applicable policy requires the plaintiff to permit the defendants to examine his books and records upon request when a claim is made and to otherwise compel him to cooperate during the investigation of the claim. He has failed to do so.

Based upon these defaults, along with other defaults described in the counterclaim, defendants seek a declaration on the counterclaim that plaintiff is not entitled to coverage under the applicable policy.

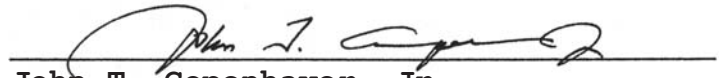
Inasmuch as plaintiff has neither answered the counterclaim, nor responded to the motion for default judgment thereon, it is ORDERED as follows:

1. That the Proposed Findings and Recommendation be, and it hereby is, adopted by the court; and
2. That the motion for default judgment on the counterclaim be, and hereby is, granted, with defendants having no obligation to provide coverage under the applicable policy.

As the magistrate judge notes, this action was originally instituted against Herman Williams, Saw Williams and H and P Recycling. There is no indication in the record that those defendants were ever served with process or otherwise pursued as real parties in interest. Inasmuch as plaintiff has not appeared for purposes of prosecuting the complaint or defending the counterclaim, it is ORDERED that this action be, and hereby is, referred anew to the magistrate judge for such further proceedings, including a hearing to show cause, that may be necessary to adjudicate the remainder of this action.

The Clerk is directed to forward copies of this written opinion and order to the pro se plaintiff at his last known mailing address, all counsel of record, and the United States Magistrate Judge.

DATED: August 12, 2015


John T. Copenhaver, Jr.
United States District Judge